

UNITED STATES BANKRUPTCY COURT

SOUTHERN DISTRICT OF NEW YORK

Case No. 09-50026

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In the Matter of:

MOTORS LIQUIDATION COMPANY, et al.

f/k/a General Motors Corporation, et al.,

Debtors.

- - - - -x

United States Bankruptcy Court

One Bowling Green

New York, New York

May 27, 2010

9:49 AM

B E F O R E:

HON. ROBERT E. GERBER

U.S. BANKRUPTCY JUDGE

VERITEXT REPORTING COMPANY

212-267-6868

516-608-2400

1  
2 STATUS CONFERENCE re Pretrial Conference in Motors Liquidation  
3 Company v. Bayerische Motoren Werke Aktiengesellschaft,  
4 Adversary Proceeding No. 10-05006(REG)

5  
6 STATUS CONFERENCE re Official Committee of Unsecured Creditors  
7 of General Motors Corporation v. JPMorgan Chase Bank, N.A., et  
8 al., Adversary Proceeding No. 09-00504 (REG)

9  
10 HEARING re Debtors' Thirteenth Omnibus Objection to Claims  
11 (Workers' Compensation Claims)

12  
13 HEARING re Debtors' Fourteenth Omnibus Objection to Claims  
14 (Workers' Compensation Claims)

15  
16 HEARING re Debtors' First Omnibus Objection to Claims (Amended  
17 and Superseded Claims)

18  
19 HEARING re Third Motion of Debtors for Entry of Order Pursuant  
20 to 11 U.S.C. § 1121(d) Extending Periods in which Debtors May  
21 File Chapter 11 Plan and Solicit Acceptances Thereof

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25 Transcribed by: Lisa Bar-Leib

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1 P R O C E E D I N G S

2 THE COURT: Good morning. General Motors. I want to  
3 deal with the nonadversary proceedings first, then BMW, then  
4 the creditors' committee's action against JPMorgan Chase.

5 Mr. Smolinsky, good morning.

6 MR. SMOLINSKY: Good morning, Your Honor. Joe  
7 Smolinsky of Weil Gotshal & Manges for the debtors. Moving to  
8 the uncontested matters, I think I can handle the thirteenth  
9 and fourteenth omnibus objections to claims together. These  
10 are claims objecting to workers' compensation claims in states  
11 in which New GM has assumed a liability.

12 We received, in connection with these motions, two  
13 replies, in each case by the Mississippi Workers' Compensation  
14 Individual Self-Insurer Guaranty Association. The sum and  
15 substance of that response was that they thought that it was  
16 improper that we would transfer the liability to New GM and  
17 take away surety bonds that we had posted -- that GM had posted  
18 prior to the bankruptcy. We've provided them now with all of  
19 the necessary documents to demonstrate that the surety bond was  
20 transferred to New GM as part of the sale. And they're now  
21 going through the steps that they need to withdraw their  
22 objection. So we're going to adjourn the objection -- the  
23 motion with respect to those claims that were filed on behalf  
24 of individuals in Mississippi and go forward with the rest of  
25 the motion.



1 We also received a statement in support by the Ohio  
2 Bureau of Workers' Compensation so I don't think that we need  
3 to address that here.

4 And finally, a letter by Aretha Smiley which was  
5 sent, I believe, in response to omnibus motion number 14.  
6 Well, I think most of the letter was addressed to Your Honor  
7 rather than the debtors. We'd be certainly prepared to send  
8 her a letter explaining that to the extent that she has  
9 recourse remedies, appeals, that she could pursue those  
10 remedies against New GM. And we've spoken to New GM and they  
11 certainly understand and agree that that would be the right  
12 course of action.

13 THE COURT: I think that'd be helpful, Mr. Smolinsky.  
14 So please do that. I'm going to suggest it but not order it.  
15 And am I correct that as insofar as you've kicked those two  
16 aspects to allow them to do their thing to satisfy themselves  
17 that they're taking care of the motion, it's otherwise  
18 unopposed?

19 MR. SMOLINSKY: That's correct.

20 THE COURT: It's granted.

21 MR. SMOLINSKY: Thank you. That's both 13 and 14?

22 THE COURT: Right. Okay. Then I got an exclusivity?

23 MR. SMOLINSKY: Before we get to exclusivity, there's  
24 the first omnibus objection to claim which we're now finally  
25 ready to close out. There were two claims, one filed by del

1 Norte Chevrolet and one claim filed by Larry Allen. They were  
2 co-obligors -- co-entitlers to the claim, identical claims. We  
3 had objected to both. And we've now worked out a stipulation  
4 whereby they understand that they're going to interpose just  
5 one claim. They will take care of allocating the proceeds in  
6 the way that they see fit. And they will deliver to us the  
7 name and the tax id number of the party that they wish to be  
8 designated to receive the distributions.

9 We're prepared to hand up that stipulation which we  
10 can deliver to chambers. And that would close out omnibus  
11 motion number 1.

12 THE COURT: That's fine. So just have one of your  
13 folks drop it off across the hall when we're done today.

14 MR. SMOLINSKY: Thank you, Your Honor. Your Honor,  
15 the final uncontested matter on today is the debtors' third  
16 request for extension of exclusivity. We're requesting an  
17 addition four day -- four month period to file and solicit  
18 acceptances to the plan. As Your Honor is aware, these cases  
19 were commenced on June 1st, 2009. A lot has been accomplished  
20 and we're moving quickly to position ourselves for the next  
21 important phase of this case which is the filing of a plan of  
22 liquidation which hopefully will be on a largely consensual  
23 basis.

24 We don't often have the opportunity to report on a  
25 more macro basis, so what I'd like to do is just spend a minute

1 or two going through some of the recent events. And this will  
2 supplement what we think is a fulsome discussion in the motion  
3 about the things that we've been doing to put ourselves in that  
4 position. And hopefully, this will also satisfy the  
5 committee's request for more public information about what  
6 has -- the progress that's been made to date.

7 Your Honor, we've reported to you in the past that  
8 there are two gaiting issues to the filing of the plan. The  
9 first is the treatment of future obligations with respect to  
10 real estate that was retained by MLC after the sale.

11 THE COURT: Much of which may have environmental  
12 issues.

13 MR. SMOLINSKY: That's correct, Your Honor. Not all,  
14 but many of the properties do have issues. The goal has always  
15 been to obtain the consent of each and every federal agency in  
16 each and every affected state and local municipality to a  
17 proposed real estate mediation program. As Your Honor will  
18 recall, as part of the sale, Treasury left behind funds that  
19 were to be used to achieve that result and to conduct a wind-  
20 down of the affairs of Motors Liquidation Company.

21 We continue to believe that those funds are more than  
22 sufficient to satisfy those obligations. And it's been our --  
23 but it has not been our desired approach to use those funds in  
24 a contentious manner to litigate over whether or not those  
25 funds would be sufficient but rather to gain consensus to our

1 proposal. And we could finally report that there has been some  
2 tangible and meaningful progress that's been made in that  
3 arena.

4 A week or so ago, the Obama administration announced  
5 that they're proposing a trust fund of approximately 800  
6 million dollars to pay for not only the cleanup but for the  
7 development of the ninety or so properties that MLC continues  
8 to own in fourteen states. Of that amount, 536 million dollars  
9 approximately is slated for remediation. The balance of the  
10 funding will support an ambitious program not only to  
11 administer and maintain the properties but also to prepare them  
12 for redevelopment. And that is a major benefit for state and  
13 local governments to the extent that they go along with the  
14 proposal.

15 Why is this announcement so important? Well, number  
16 one, it's the first time that the federal government has spoken  
17 with one voice. Not only the auto task force but now, the  
18 entire federal government, including the Environmental  
19 Protection Agency, have worked with the materials that we've  
20 provided to them. We've had many meetings in a very intense  
21 effort and period of cooperation. And now, they've all  
22 indicated their support. This signifies the coming together of  
23 all the agencies and now they're no longer hopefully voicing  
24 independent views about the future.

25 Number two, there's now a consensus between the

1 federal government and the company on the amount of money  
2 necessary to implement the remediation as well as deal with any  
3 potential unforeseen costs that may come up. The 536 million  
4 dollars has significant cushions in that to deal with any  
5 unforeseen contingency.

6 So there's been a tremendous amount of work to get to  
7 the point where there's been a sharing of information, hundreds  
8 of meetings, calls, site visits. To give you a sense of the  
9 magnitude of what we're talking about, these ninety properties  
10 cover about seven thousand acres and comprise about forty-eight  
11 million square feet under roof. So this is not a small amount  
12 of real estate that we're talking about.

13 The third significance is that the Administration has  
14 supported a framework for a trust to be set up in order to  
15 implement this. And this falls right within what we  
16 anticipated and contemplated as far as our plan of liquidation.  
17 So from this point forward, it won't take too much to  
18 incorporate that into our plan concept although we do need to  
19 sit down with the federal government now and talk about the  
20 details of that trust.

21 So the next step, Your Honor, is to --

22 THE COURT: Pause, please, Mr. Smolinsky. The  
23 general idea being that the estate, and perhaps with  
24 supplemental funding by the U.S. government, would put money or  
25 assets into the trust and then the trust would do its thing for

1 the remediation and the estate would move on.

2 MR. SMOLINSKY: That's correct, Your Honor. And  
3 they'll see eventually will dissolve and will leave the trust  
4 there that will be prepared to maintain and manage the  
5 properties for decades, if necessary.

6 THE COURT: Continue, please.

7 MR. SMOLINSKY: So, Your Honor, the next step is to  
8 get the states on board. We're not starting from step 1. The  
9 states have been involved that every step of the way have been  
10 provided with all the information that the government has been  
11 provided with. There have been various meetings between the  
12 states and the federal government. So that process is well  
13 along. And we anticipate at this point of getting the support  
14 of most, if not all, of the states.

15 To the extent of any holdouts, we don't intend to  
16 stay in bankruptcy forever. At that point, we would have no  
17 choice but to go forward and seek to estimate those claims,  
18 those obligations as part of moving forward with the plan  
19 process.

20 The other gaiting issue, Your Honor, is asbestos.  
21 And well, we believe that a plan can be confirmable based  
22 purely on estimation of those liabilities. We would prefer to  
23 solicit a plan which has the support of both the current and  
24 future asbestos claimants as well as the creditors' committee  
25 as to how much of the remaining assets will be set aside for

1 present and future claims.

2 We continue to provide significant information to the  
3 creditors' committee, their experts, the future claim  
4 representative, the official committee of asbestos claimants.  
5 And hopefully, that data will help them assess our estimates  
6 and participate meaningfully in settlement discussions.

7 In addition to those gaiting issues, we continue to  
8 make progress on other fronts as well. Where claims are  
9 concerned, we filed numerous claim objections, as Your Honor  
10 was aware. To date, we focus primarily on procedural  
11 objections and individual large claims. But now, in order to  
12 move into the plan process, we are ready to tackle many  
13 additional claims.

14 As indicated in our motion, we're faced with over  
15 70,000 claims totaling 274 billion dollars. Those claims have  
16 been whittled down substantially and we gave some detail in the  
17 motion about the progress that we've made to date. But over  
18 the next month or two, we intend to object to approximately  
19 4300 claims that are filed by employees whose obligations have  
20 been satisfied or will be satisfied by New GM. 18,000 claims  
21 asserted by beneficial holders of debt instruments that are  
22 duplicative of claims that have been filed by the respective  
23 indenture trustees. And you'll be seeing papers shortly  
24 reconciling those claims with the respective trustees.

25 We have 2,000 late filed claims that we have a

1 process for objecting to as well as 400 claims of taxing  
2 authorities that we believe have been satisfied.

3 Your Honor, we are going to be coming before you with  
4 a request to implement a procedure to deal with these tens of  
5 thousands of claims in a more productive manner than filing  
6 motions at a hundred a cliff. We're not asking Your Honor to  
7 prejudge that and we'll bring that before Your Honor and --

8 THE COURT: That's fine. Mr. Smolinsky, hopefully  
9 this may save you some work. Yesterday, I approved but only  
10 conditionally an uncontested motion for sending out bulk  
11 notices of claims. Bankruptcy judges around the country,  
12 including me, have been troubled with what it does to a  
13 creditor to get one of these piles of things which lists more  
14 than a hundred claimants. And we've been scratching our heads  
15 as to how to reconcile the fact that you don't want to  
16 dissipate all of the assets of the estate in giving out many,  
17 many claim objections but that for a lot of creditors,  
18 especially mom and pops, getting the stuff that historically  
19 has been dumped on them is totally useless and is scary and  
20 incomprehensible.

21 I am groping for the sweet spot but chance are, I am  
22 not going to permit a wholesale waiver of the hundred creditor  
23 limit, which was put in to deal with this problem, and will  
24 want something along the lines of something in baby talk, and I  
25 mean really baby talk, that has two or three boldfaced



1 paragraphs that says you're getting this because this affects  
2 you. And you better do something if you don't like what we  
3 propose to do to you.

4 I would suggest that you have one of your associates  
5 look at what I am entering in DBSD which is a case which would  
6 normally be thought of as a big case. Obviously, it's not as  
7 big as this one -- which reflects my latest thinking on getting  
8 the sweet spot between not dissipating all of the assets of the  
9 estate and bureaucracy and giving fair notice to creditors.

10 MR. SMOLINSKY: Your Honor, I think we've been fairly  
11 creative in this case in trying to deal with the magnitude of  
12 the issues that we have. Hopefully, you'll find that  
13 creativity in our motion. We've tried to recognize that  
14 individuals who are used to getting important packages in large  
15 envelopes with stacks of paper that will now only hopefully a  
16 letter-size envelope with information about their particular  
17 claim with, obviously, reference to the entire motion. We've  
18 tried to incorporate things like stamping the envelope with a  
19 red stamp. It says "Official Court Document". Trying to do  
20 things that might alleviate some of your concerns. But we'll  
21 certainly look at that motion and --

22 THE COURT: I'll -- fair enough. And I'll hear what  
23 you have to say, Mr. Smolinsky. But I want you to be on notice  
24 in advance that, in my view, what has been done in this court  
25 up to this point has been insufficient. So we're going to have

1 to do better.

2 MR. SMOLINSKY: Understood, Your Honor.

3 THE COURT: Okay.

4 MR. SMOLINSKY: As reported in our motion, the ADR  
5 process continues to pay dividends and reduce the number of  
6 litigations that may ultimately be before this Court or another  
7 Court for adjudication. The extra period that we are asking  
8 for we expect it to be used productively to get us to as  
9 consensual a plan with as little friction as possible.

10 Your Honor, I'm happy to address any questions you  
11 have. There have been a number of statements that have been  
12 filed by the various committees. I think that, on balance,  
13 they're all in support. There was a statement in the Trafelet  
14 objection about some documents that they thought were missing.  
15 But --

16 THE COURT: Objection to exclusivity on that ground?

17 MR. SMOLINSKY: Your Honor, we were not offended  
18 because I think it is important to give everyone an opportunity  
19 to be heard about issues that they see in front of them. But  
20 as you see in the corrected notice, that information was made  
21 available. And hopefully that alleviates any concerns.

22 THE COURT: All right. Creditors' committee.

23 MS. SHARRET: Jennifer Sharret from Kramer Levin on  
24 behalf of the official committee of unsecured creditors. The  
25 official committee supports the extension of exclusivity and we

1 appreciate the public disclosure they add in the motion and at  
2 the record today. And while we hope that the debtors can reach  
3 a consensus with all the parties, we want them to still propose  
4 a plan of liquidation as expeditiously as possible and to keep  
5 apprised in the public as much as they can about the public  
6 timeline.

7 In addition, we just would note that we have been  
8 working with counsel for the debtors on process for objections  
9 to claims particularly late filed claims. And we'll continue  
10 to work with the debtors on a new process to deal with claims  
11 objections.

12 THE COURT: All right. Fair enough. Anybody else  
13 wish to be heard before I rule? Record will reflect no  
14 response.

15 The motion for the extension of exclusivity will be  
16 granted. And in light of the lack of meaningful opposition to  
17 this motion, I'm not going to make extensive findings of fact  
18 and conclusions of law. I'll take just a moment for the  
19 explanation of the bases for the exercise of my discretion in  
20 this regard.

21 It's obvious to me, having seen this case on my  
22 watch, that the debtors are, as they say, making excellent  
23 progress in this case. And it's also to obvious to anyone in  
24 the world who's looked at this case that despite what has been  
25 accomplished so far, most significantly as a consequence of the

1 363 sale, this is still a very, very large case with some very,  
2 very major issues, the most important of which Mr. Smolinsky  
3 articulated which have the potential, at least, of presenting  
4 gaiting issues before the plan an be formulated.

5 This is exactly the paradigmatic example of a case in  
6 which an extension of exclusivity is appropriate. It's obvious  
7 that the extension is not sought to feather the debtor's nest  
8 and I don't think I need to say more. Motion granted.

9 Mr. Smolinsky, you or one of your guys settle an  
10 order -- forgive me. Submit an order. You don't need to  
11 settle it -- in accordance with that ruling at your earliest  
12 convenience.

13 MR. SMOLINSKY: Thank you, Your Honor. We will.

14 That takes us to the two pretrial conferences. I  
15 could handle BMW and then --

16 THE COURT: Would you, please?

17 MR. SMOLINSKY: -- gladly sit down.

18 THE COURT: Do you have an opponent who would be  
19 coming up on this?

20 MR. SMOLINSKY: I believe --

21 MR. ATAMIAN: Yes, Your Honor. Jean-Marie Atamian  
22 from Mayer Brown.

23 THE COURT: Couldn't hear you. You want to come up  
24 to a microphone, please? May I get your name again?

25 MR. ATAMIAN: Thank you, Your Honor. Jean-Marie

1 Atamian from Mayer Brown.

2 THE COURT: Kamen?

3 MR. ATAMIAN: Atamian, A-T-A-M-I-A-N. First name  
4 J-E-A-N dash M-A-R-I-E from Mayer Brown on behalf of BMW AG.

5 THE COURT: Okay. Thank you. Have a seat for a  
6 minute, please, Mr. Atamian.

7 MR. ATAMIAN: Thank you, Your Honor.

8 MR. SMOLINSKY: Your Honor, BMW's time to respond to  
9 the complaint has been extended to June 15th. This may be one  
10 of those rare circumstances where the difficulties of  
11 international service over the course of months may ultimately  
12 pay off. We are addressing the possibility of taking some  
13 steps which would allow us to dismiss this adversary. So we're  
14 hopeful that this adversary won't be before you too much  
15 longer. There are some things that have to be worked out but  
16 we expect to work on those issues as quickly as possible.

17 THE COURT: Mr. Atamian, may I get your perspective,  
18 please?

19 MR. ATAMIAN: Yes, Your Honor.

20 THE COURT: Would it be easier for you if you came to  
21 the main lectern where you don't have to --

22 MR. ATAMIAN: That'll be fine.

23 THE COURT: -- crouch over so much?

24 MR. ATAMIAN: Disadvantages of being tall.

25 THE COURT: I've never had to confront that issue.

1 MR. ATAMIAN: Your Honor, a few months -- a few weeks  
2 ago, we were contacted by counsel for MLC and we were asked  
3 whether we'd be interested in entering into a stipulation that  
4 would, in effect, freeze this litigation -- that the litigation  
5 would be dismissed and that if the settlement or resolution  
6 couldn't be reached, there would be a refiling a couple of  
7 months down the road.

8 We drafted a stipulation and forwarded it on to  
9 debtors' counsel. Did not hear back on the stipulation. I  
10 understand that they were tied up on issues involving the  
11 adversary and had more pressing matters to deal with. I did  
12 get a call from debtors' counsel yesterday advising us that  
13 they were working in Europe and Germany and France on some  
14 matters and some issues were being addressed there that might  
15 result in their dismissing this action without prejudice in the  
16 next few weeks.

17 I'd just like to correct one comment that debtors'  
18 counsel made. He said that we had somehow been given an  
19 extension. We did move for an extension. We submitted a  
20 letter to Your Honor which Your Honor endorsed asking for  
21 clarification on when an answer date would be due or a date to  
22 otherwise move a few weeks ago when it made sense to do that.

23 In view of the call --

24 THE COURT: Pause, please, Mr. Atamian. My  
25 recollection of what I said in my order was that you could have

1 the time to answer but I wanted to see you guys in the  
2 conference.

3 MR. ATAMIAN: That's correct. But we asked for  
4 clarification because it wasn't clear to us when the answer or  
5 the date to otherwise move would be and we didn't want to risk  
6 being in default.

7 Based on the call that we've gotten yesterday, and we  
8 do hope that this gets resolved in the next few weeks, we don't  
9 believe that it makes a lot of sense for our client to pay for  
10 us -- and I'll let the cat out of the bag. If we have to  
11 respond, we will make a motion to dismiss. We don't think it  
12 makes a lot of sense for them to fund that type of effort in  
13 the next two weeks. We've obviously started but would have to  
14 expend a fair amount of time before June 15 to work on our  
15 papers and finalize our papers. And it would also require us,  
16 in all likelihood, to hire a German expert, an expert on German  
17 law, in making our motion to dismiss.

18 So we would ask that the June 15th date be vacated  
19 and that the date to answer or otherwise move be adjourned sine  
20 die. And hopefully, we will have a resolution in the next few  
21 weeks.

22 THE COURT: Mr. Smolinsky, further comments? Stand  
23 just to the side, please -

24 MR. ATAMIAN: Sure. I'm sorry.

25 THE COURT: -- Mr. Atamian, to let Mr. Smolinsky be

1 heard.

2 MR. SMOLINSKY: Thank you, Your Honor. Joe Smolinsky  
3 for the debtors. Just to give Your Honor a little bit more  
4 color, you haven't heard much about Strasbourg. Strasbourg is  
5 a subsidiary of MLC which are the only remaining operations.  
6 We have a fully functional transmission plant in Strasbourg  
7 which has to be dealt with. And that is part and parcel of the  
8 issues that we're dealing with here today. In view of what we  
9 hope will be a global resolution of everything pertaining to  
10 Strasbourg, we have no objection to putting this on a holding  
11 pattern until we work this out.

12 THE COURT: Okay. Here's what we're going to do,  
13 gentlemen, because nothing would please me more than making the  
14 matter go away. But there are steps that I or any other judge  
15 would have to do in the exercise of ordinary case management to  
16 protect the needs and concerns of the Courts.

17 First, the time to answer, move or otherwise respond  
18 will be kicked but not eliminated in an amount of time to be  
19 agreed upon by the two of you which is then to be papered and  
20 presented to me by means of a stip or consent order which will  
21 be subject to amendment for cause. And if there are productive  
22 discussions going on between you or if the debtor, for that  
23 matter, is doing things on its own that makes a response  
24 premature, that'll, of course, be good cause as well. But I  
25 don't want balls falling between the outfielders and I don't



1 want anything done sine die.

2 Secondly, I've been doing this for a while. I've  
3 been a judge for ten years and I was a lawyer for thirty years  
4 before that. And I've got a sense as to when 12(b)(6)s make  
5 sense and I've got a sense as to when people file them and then  
6 I conclude after I've worked for hours and hours on them and  
7 the lawyers have worked even more on them they've been a waste  
8 of time. If all of the things that might make this go away  
9 fall apart, and you guys agree to disagree and to proceed with  
10 either this litigation or any successor litigation, if the  
11 defendant isn't happy to present its defenses, by answer as  
12 contrasted to motion, we're to have a pre-argument conference  
13 at which time I can decide whether I think the 12(b)(6) is a  
14 good use of our time or not. Historically, I've found that  
15 when cases are capable of being disposed of on motion, more  
16 often than not summary judgment is the time rather than  
17 12(b)(6), because in my experience when plaintiffs are  
18 represented by competent counsel, which they obviously are  
19 here, they're smart enough to know how to frame a complaint.  
20 And on a lot of the stuff that we do in this court, it's hard.  
21 And something before summary judgment may or may not be  
22 productive. Classic example of that is what happened in  
23 Adelphia where I got a 12(b)(6) on fraudulent conveyance type  
24 of stuff and, of course, I had to deny it. Then Larry McKenna  
25 up in the district court granted the motion and he just got

1 affirmed by the circuit underscoring the differences between  
2 12(b)(6)s, on the one hand, and Rule 56s on the other.

3 This is to save both sides, but, frankly, I care more  
4 about saving the side of the estate money in silly and  
5 unnecessary litigation. It may be that I will say, yeah, go  
6 ahead, if you want to make a 12(b)(6), you can. But we're  
7 going to do a stop, look and listen before we do so.

8 So for now, everything you said is fine with me, Mr.  
9 Smolinsky and Mr. Atamian. But if you get to the point where  
10 we have to go forward, we're going to have to do some case  
11 management stuff before we put trains on tracks that we can't  
12 stop.

13 I'd like to get recommendations from each of you as  
14 to a good time for a continued status conference.

15 MR. SMOLINSKY: Your Honor, would it make sense to  
16 provide in the stipulation that we set a status conference and  
17 then provide a number of days after that status conference to  
18 file responsive pleadings?

19 THE COURT: Might very well but I want to hear from  
20 Mr. Atamian as to his perspective before I answer that.

21 MR. ATAMIAN: Yes, Your Honor. It seems to me that  
22 it probably makes sense to kick this out. I heard Your Honor  
23 loud and clear. You're not a believer in sine die adjournments  
24 and I can understand that. I am not in control of what is  
25 going on in Europe so I can't really tell Your Honor today how

1 long would be an appropriate time to see if all of this can be  
2 resolved in such a way that the action against my client is  
3 dismissed. I would think forty-five or sixty days of breathing  
4 space should give us enough time. If you think it will take  
5 longer or less time, I'd be happy to know.

6 THE COURT: Mr. Smolinsky, do you think a longer or  
7 lesser time would be better?

8 MR. SMOLINSKY: Well, I just spoke to my client and  
9 we anticipate a six to eight week period to work out the things  
10 that we have to work out. So perhaps it makes sense to set  
11 something for shortly thereafter, something maybe a little bit  
12 shy of three months.

13 THE COURT: Little shy of three months. Okay. Mr.  
14 Atamian, I didn't hear you objecting to that.

15 MR. ATAMIAN: No objection, Your Honor.

16 THE COURT: And since you're a defendant -- I'm  
17 sorry?

18 MR. ATAMIAN: No objection, Your Honor.

19 THE COURT: Yeah. Since you're a defendant, later is  
20 usually quite satisfactory for defendants. Mr. Smolinsky, get  
21 yourself a date from my courtroom deputy, Ms. Blum, convenient  
22 to Mr. Atamian in that three-month range you were talking  
23 about. It's going to be a conference. And since any answer  
24 might depend on whether stuff that might otherwise be done by  
25 motion will have to be done by answer first, I like your idea

1 of having the conference and allowing a reasonable time to  
2 respond after the conference. See if you guys can paper  
3 something that tentatively works and is subject to adjustment  
4 for cause.

5 MR. SMOLINSKY: Thank you. We will, Your Honor.

6 THE COURT: Very good.

7 MR. ATAMIAN: Thank you, Your Honor.

8 THE COURT: All right. Thank you, folks.

9 Okay. Creditors' committee against JPMorgan Chase.

10 (Pause)

11 THE COURT: I know many of you. I don't know  
12 everybody. Mr. -- is that Mr. Callagy?

13 MR. CALLAGY: John Callagy from Kelley Drye for  
14 JPMorgan Chase.

15 THE COURT: Right. I've heard you on the phone. I  
16 think this is the first time I've seen you in person. Okay.  
17 Mr. Toder, who do you have?

18 MR. TODER: Also representing JPMC, Your Honor.  
19 You'll recall we were involved pretty actively in the  
20 bankruptcy part and we're assisting Mr. Callagy in this regard.

21 THE COURT: Forgive me if I don't remember that, but  
22 okay. And next to --

23 MR. TODER: I'm a very forgettable person as Your  
24 Honor is well aware.

25 THE COURT: Yes. Next to you, please, Mr. Toder?

1 MR. PANARELLA: Nicholas Panarella from Kelley Drye  
2 also representing JPMorgan.

3 THE COURT: Okay. So you're with Mr. Callagy, Mr.  
4 Panarella?

5 MR. PANARELLA: That's correct, Your Honor.

6 THE COURT: Okay. Mr. Seidel and --

7 MR. SEIDEL: Good morning, Your Honor.

8 THE COURT: -- Mr. Fisher?

9 MR. FISHER: Good morning, Your Honor.

10 THE COURT: Okay. All right. Gentlemen, I've read  
11 Mr. Callagy's letter of March 29. And putting aside Mr.  
12 Callagy's perception of what he thinks to be relevant facts as  
13 a matter as to which Mr. Seidel and Mr. Fisher might have  
14 different views. Mr. Seidel or Mr. Fisher, you remain of the  
15 view, as Mr. Callagy states, that you still think that motions  
16 for summary judgment in each direction would be productive?

17 MR. FISHER: We do, Your Honor.

18 THE COURT: Mr. Fisher?

19 MR. FISHER: We do, Your Honor. And just to make  
20 sure that the Court has a complete record, we submitted a  
21 letter to Your Honor on April 7th, 2010 responding to Mr.  
22 Callagy's letter indicating that it was still both parties'  
23 view that summary judgment would be appropriate.

24 THE COURT: Well, I apologize to you, Mr. Fisher,  
25 that my bundle doesn't include your letter. But given what you

1 just said, I'm not sure if I need it. And I assumed that you  
2 wouldn't agree with Mr. Callagy's view of the world on the  
3 underlying facts.

4 MR. FISHER: That's correct.

5 THE COURT: Okay. All right. Gentlemen, I'm going  
6 to grant what now appears to be the joint request that you be  
7 permitted to file the summary judgment papers without, of  
8 course, expressing any view on the merits of the parties'  
9 underlying positions.

10 I sensed from your second letter, Mr. Callagy, the  
11 one on March 29, that at least at one time, there was an  
12 agreement on what discovery was appropriate. And you even had  
13 agreed at one time on a briefing schedule. To what extent in  
14 your view, Mr. Callagy, and I'm going to ask Mr. Fisher for his  
15 view in a minute, is it still the case that no further  
16 discovery is necessary? And to what extent, if any, do we need  
17 to do anything other than having you guys update your briefing  
18 schedule based, of course, on the fact that we're now  
19 addressing it some weeks after this matter originally came up?

20 MR. CALLAGY: Yes, Your Honor. With respect to the  
21 issues addressed by summary judgment motion, we have no need  
22 for further discovery. And the only thing we need to do is to  
23 get our papers in shape as you suggest.

24 THE COURT: Mr. Fisher, do you agree?

25 MR. FISHER: Yes, I agree, Your Honor. From the

1 outset of this case, we conducted it anticipating that the key  
2 question, which is the effectiveness of the termination  
3 statement, would likely be amenable to early dispositive  
4 motions. And so we conducted all the discovery relevant to  
5 that limited issue. And there's no discovery needed on that  
6 issue, Your Honor.

7 THE COURT: Okay. Now, I don't care who speaks  
8 first. I assume that you folks have to update your earlier  
9 understanding on a briefing schedule. But do you think you can  
10 work out something amongst yourselves for a recommendation to  
11 me?

12 MR. CALLAGY: I believe we can, Your Honor. I don't  
13 think that that'll be a problem at all.

14 THE COURT: What kind of sequence did you have in  
15 mind when it appeared that both sides were looking for summary  
16 judgment against the other?

17 MR. CALLAGY: Actually, as I recall, there was  
18 probably a -- I think there was a simultaneous filing for  
19 filing the motion for summary judgment which can be what we do  
20 now or we can do it in sequence, as the Court sees fit.

21 THE COURT: Frankly, I would prefer that you folks  
22 put your noodles together and come to a view, preferably a  
23 joint view, as to what you think better skins the cat. And if  
24 it's reasonable, I'll approve it. The one and only thing that  
25 is nonnegotiable from my perspective is that I need a

1 satisfactory time between the filing of the last brief, which,  
2 if you're doing by that simultaneous concept, would presumably  
3 be a reply, but which, if you did them by some kind of seriatim  
4 arrangement, might be a surreply in the time of oral argument.  
5 I think you also have to assume that on a matter of this  
6 nature, you're not likely to get a ruling from the bench which  
7 has the advantage, I suppose, that I don't have to do the work  
8 that normally has to get done so I can dictate a ruling off the  
9 bench at or very shortly after the time of an argument but  
10 which has the flipside that you have to wait for me to write on  
11 the issue. I have assumed, subject to revision when I read  
12 your stuff, that this will warrant a written decision. And  
13 I've also assumed that whoever loses is going to take me up on  
14 it. I think there's just too much money and too much at stake  
15 to have any assumption to the contrary.

16 Further thoughts, Mr. Callagy?

17 MR. CALLAGY: In terms of -- I'm sorry. In terms of  
18 whether or not there would --

19 THE COURT: Anything you want to tell me.

20 MR. CALLAGY: No. I think we can easily work out a  
21 schedule. I would assume that we would probably do the same  
22 kind of a simultaneous filing and then we would work out a  
23 briefing schedule and submit it to Your Honor for approval.  
24 And obviously, from the standpoint of the hiatus between the  
25 last brief and the court hearing obviously is up to Your Honor.



1 And as far as the appeal is concerned, Your Honor, I would hope  
2 that we would be successful. I don't know what they will do.

3 THE COURT: Somehow I don't hear you waiving your  
4 right to appeal if you're not. Mr. Fisher, different view?

5 MR. FISHER: I agree entirely, Your Honor, except I  
6 would say I would hope we would be successful.

7 THE COURT: Okay. Then here's what I want you guys  
8 to do. I want you to caucus amongst yourselves, agree upon a  
9 way to tee this all up for judicial determination, paper it in  
10 a stip or consent order. It's got to be subject to Court  
11 approval but if it's reasonable, I'm not going to give you a  
12 hard time on it. And take it through the submission of the  
13 last brief. And, based on the date of your submission of the  
14 last brief, I'll then give you a most likely firm date for oral  
15 argument. Although, am I correct that you guys are all in New  
16 York and therefore I don't have people coming in from out of  
17 town?

18 MR. CALLAGY: That's correct, Your Honor.

19 THE COURT: Any of you otherwise engaged in trials or  
20 matters before other judges that are going to have material  
21 impact on your availability?

22 MR. FISHER: Yes and no, Your Honor. I think --  
23 we'll accommodate Your Honor's schedule. I mean, I don't have  
24 anything that's presently scheduled. But I think there will be  
25 things that could come up in terms of trials that I'm

1 responsible for which could happen in the next six months. But  
2 I don't know of a matter, Your Honor.

3 THE COURT: Okay. Take your stip through the  
4 submission of the last brief. And obviously, I'm not going to  
5 schedule the oral argument for a time at which any major player  
6 can't be present.

7 All righty. Anything else? Any side? Anybody?

8 MR. FISHER: Nothing, Your Honor.

9 THE COURT: Mr. Fisher?

10 MR. FISHER: No, thank you.

11 THE COURT: Mr. Callagy?

12 MR. CALLAGY: No, Your Honor. Thank you.

13 THE COURT: All right, folks. Thank you. Have a  
14 good day. We're adjourned.

15 (Whereupon these proceedings were concluded at 10:31 a.m.)  
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I N D E X

R U L I N G S

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C E R T I F I C A T I O N

I, Lisa Bar-Leib, certify that the foregoing transcript is a  
true and accurate record of the proceedings.

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LISA BAR-LEIB

AAERT Certified Electronic Transcriber (CET\*\*D-486)

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Date: May 28, 2010